

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JIM EARL KERN,

Defendant.

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CASE NO. 8:04CR148

ORDER

This matter is before the court on defendant's "Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody" (§ 2255 motion) (Filing No. 67), and the government's Answer and responsive materials (Filing Nos. 72, 73, & 74). The court has reviewed all of the submitted documents and will hold an evidentiary hearing on the matter.

IT IS ORDERED:

1. A hearing is scheduled on the defendant's Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody (§ 2255 motion) before the undersigned United States district judge on **September 25, 2006 at 2:30** in Courtroom No. 2, Roman L. Hruska U.S. Courthouse, 111 South 18th Plaza, Omaha, Nebraska;

2. Counsel for the defendant, if previously appointed pursuant to the Criminal Justice Act, is reappointed to represent the defendant for purposes of the § 2255 motion. In the event defendant's previously appointed counsel should decline this reappointment for reason of conflict or on the basis of the Criminal Justice Act Plan, the Federal Public Defender shall forthwith provide the court with a draft appointment order (CJA Form 20) bearing the name and other identifying information of the CJA Panel attorney identified in accordance with the Criminal Justice Act Plan for this district. If retained, counsel for the defendant remains as counsel for the defendant until the § 2255 motion is resolved or until the defendant submits to the court a completed and signed Financial Affidavit and his retained counsel is given leave to withdraw;

3. The Marshal is directed to return the defendant to the district for this hearing. If the defendant at a later date decides to waive his right to be present at the hearing, he may do so (at least 6 weeks prior to the hearing) by contacting his attorney who shall then inform the court and the U.S. Marshal of defendant's decision. In that event, the defendant

may participate telephonically in the hearing by informing his attorney, who in turn shall supply this court with a telephone number at which the defendant may be reached for the hearing; and

4. The clerk for the court shall provide a copy of this Memorandum and Order to the U.S. Marshal, the counsel of record, and the defendant at the address of record for his current place of incarceration.

DATED this 13th day of June, 2006.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge